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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2010-607**

12 **ROGER CORPUZ TUGAS**
13 **717 Laurel Street**
San Jose, CA 95126
14 **Registered Nurse License No. 649521**

ACCUSATION

15 Respondent.
16

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs.

22 2. On or about December 13, 2004, the Board of Registered Nursing issued Registered
23 Nurse License Number 649521 to Roger Corpuz Tugas (Respondent). The Registered Nurse
24 License was in full force and effect at all times relevant to the charges brought here and will
25 expire on August 31, 2010, unless renewed.

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1 CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 8. Respondent has subjected his license to disciplinary action under section 2761,
4 subdivision (a)(4), in that on or about March 3, 2010, the California Board of Vocational Nursing
5 and Psychiatric Technicians issued a disciplinary order revoking respondent's license as a
6 vocational nurse, License No. VN 171819, for violating: (1) section 2878, subdivision (a)(1)
7 (unprofessional conduct and gross negligence relating to his care of three clients who resided in
8 the convalescent facility in which respondent worked); (2) section 2878, subdivision (a)(4)
9 (unprofessional conduct and the mistreatment or abuse of three clients under his care at the
10 convalescent facility in which respondent worked); (3) section 2878, subdivision (a)/California
11 Code of Regulations, title 16, section 2518.6 (unprofessional conduct and the failure to maintain
12 professional boundaries); and (4) section 2878, subdivisions (e) and (j) (dishonesty and making a
13 false statement on the re-examination applications). (A copy of the disciplinary Order and
14 Decision, including the Administrative Law Judge's Proposed Decision upon which the Board
15 relied, is attached as Exhibit A and is incorporated by reference.)

16 DISCIPLINE CONSIDERATIONS

17 9. To determine the degree of discipline, if any, to be imposed on Respondent,
18 Complainant alleges that on or about March 3, 2010, in a prior disciplinary action entitled In the
19 Matter of the Accusation Against Roger Corpuz Tugas before the Board of Vocational Nursing,
20 in Case Number VN-2004-2081, issued a disciplinary Order and Decision revoking respondent's
21 license as a vocational nurse in California. That decision is now final and incorporated by
22 reference as if fully set forth.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 649521, issued to Roger
5 Corpuz Tugas.

6 2. Ordering Roger Corpuz Tugas to pay the Board of Registered Nursing the reasonable
7 costs of the investigation and enforcement of this case, pursuant to Business and Professions
8 Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.

10 DATED: 5/25/10

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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EXHIBIT A

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BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

ROGER CORPUZ TUGAS
717 Laurel Street
San Jose, CA 95126

Vocational Nurse License No.
VN 171819

Respondent.

Case No. VN-2004-2081

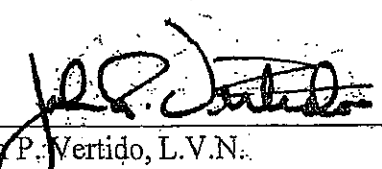
OAH No. 2009040605

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled matter.

This Decision shall become effective on March 3, 2010.

IT IS SO ORDERED this 1st day of February, 2010.



John P. Vertido, L.V.N.
President

RECEIVED
FEB 11 2010
STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
DIVISION OF PROFESSIONAL REGULATION
1000 CALIFORNIA STREET, SUITE 100
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BEFORE THE
BOARD OF VOCATIONAL NURSING AND
PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ROGER CORPUZ TUGAS
Los Gatos, California

Vocational Nurse License No. VN 171819

Respondent.

Case No. VN-2004-2081

OAH No. 2009040605

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on September 14 and 15, 2009, in Oakland, California.

Deputy Attorney General Diann Sokoloff represented complainant Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer, Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

Mark Cohen, Attorney at Law, represented respondent Roger Corpuz Tugas, who was not present.

The matter was submitted for decision on September 15, 2009.

FACTUAL FINDINGS

License History

1. On April 21, 1995, the Board of Vocational Nursing and Psychiatric Technicians issued vocational nurse license number VN 171819 to respondent Roger Corpuz Tugas. The license expired on August 31, 2006.

Incidents at Los Gatos Oaks Convalescent Hospital

2. In June or July of 2004, while working as a licensed vocational nurse at Los Gatos Oaks Convalescent Hospital, respondent engaged in the following conduct with clients who resided in the facility:

- a. Respondent used a small battery-operated massager to massage the legs and inner thighs of Client P.N., a 76-year-old woman in a wheelchair. This took place in the facility dining room in view of other residents who had gathered to listen to music. Respondent made a remark to CNA (certified nursing assistant) J.H., who witnessed the incident, to the effect that he was just joking.
- b. Respondent placed the hand of a 70-year-old male client, Client D.D., over the groin of a 53-year-old female client, Client B.O., and made a rubbing motion with Client D.D.'s hand. This took place in Client B.O.'s room, when she was in bed after CNA J.H. had given her a shower. Respondent brought Client D.D. in his wheelchair into the room and over to the bed.
- c. Respondent came into Client D.D.'s room, where CNA J.H. was changing the client's diaper after a bowel movement. Respondent took the soiled diaper and put it up to Client D.D.'s face, rubbing feces on his cheek. Respondent said something to CNA J.H. to the effect that he was teaching Client D.D. a lesson, apparently because the client had gotten feces on his hands.

3. CNA J.H. witnessed all three incidents and he testified at the hearing. Although there were some inconsistencies between his testimony and statements he made to Department of Justice special agents in January 2005, these inconsistencies regarding some of the details of the incidents do not detract from CNA J.H.'s credibility regarding the facts set forth above.

4. Respondent did not testify at the hearing, and he declined to talk to Department of Justice special agents in January 2005.

5. Complainant established by expert evidence that respondent's conduct in each of the three incidents constituted an extreme departure from the standard of care for a competent licensed vocational nurse under similar circumstances. Respondent's actions could have resulted in harm to the clients. Respondent deviated from the standard of care which requires a licensed vocational nurse to treat all clients with dignity and respect, and to maintain professional boundaries with clients. A licensed vocational nurse should never act in a sexual manner with clients.

False Statement on Applications

6. Respondent apparently took the board's licensing examination more than once before he was issued a vocational nurse license on April 21, 1995. The board's records contain two "Board Application for Re-Examination Vocational Nurse" forms submitted by respondent and dated January 11, 1994, and July 20, 1994. Question 7 on this form states, in relevant part: "Since you filed your original application, have you been convicted or pled guilty or nolo contendere to any misdemeanor or felony?" On both of these forms, respondent checked the "No" box in answer to this question. Respondent's answer was false,

because he had been convicted on August 19, 1993, of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol). This conviction occurred after respondent filed his original application. Respondent's original application is not contained in the board's records in evidence, but there are five "Record of Conviction" forms completed by respondent and dated June 7, 1993. These forms, on which respondent disclosed information pertaining to two convictions and three traffic violations, appear to be the forms an applicant must fill out if he answers "Yes" to the question asking whether he has ever been convicted of a criminal offense. It can therefore be reasonably inferred that respondent's original application was filed on or about June 7, 1993, or earlier.

Costs of Investigation & Prosecution

7. The board has incurred the following costs from the Office of the Attorney General for the investigation and prosecution of this case:

Deputy Attorney General

2008/09: 36.25 hrs. @ \$158/hr. - \$ 5,727.50

2009/10: 31.25 hrs. @ \$170/hr. - \$ 5,312.50

Paralegal

2008/09: 4.25 hrs. @ \$101/hr. - \$ 429.25

TOTAL \$11,469.25

The case originally was assigned to Deputy Attorney General Rebecca Heinsteins, who billed 20.75 hours to the case between July 10, 2008, and April 22, 2009. The case was reassigned to Deputy Attorney General Diann Sokoloff, who started billing to the case on May 19, 2009.

8. No evidence was offered regarding respondent's financial circumstances or ability to pay a cost recovery award.

LEGAL CONCLUSIONS

Applicable Law

1. Under Business and Professions Code section 118, subdivision (b), the board has continuing jurisdiction in this matter notwithstanding the expiration of respondent's vocational nurse license.

2. The standard of proof in this proceeding is clear and convincing evidence to a reasonable certainty.

3. Business and Professions Code section 2878 authorizes the board to suspend or revoke a vocational nurse's license for: unprofessional conduct (subd. (a)); "gross negligence

in carrying out usual nursing functions,"¹ as a type of unprofessional conduct (subd. (a)(1)); "use of excessive force upon or the mistreatment or abuse of any patient," as a type of unprofessional conduct (subd. (a)(4)); "[m]aking or giving any false statement or information in connection with the application for issuance of a license" (subd. (e)); and "commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee" (subd. (j)).

California Code of Regulations, title 16, section 2518.6, provides in subdivision (b)(3): "A licensed vocational nurse shall adhere to standards of the profession and shall incorporate ethical and behavioral standards of professional practice which include . . . [m]aintaining professional boundaries with the patient/client."

Incidents at Los Gatos Oaks Convalescent Hospital

4. Respondent is subject to disciplinary action under Business and Professions Code section 2878, subdivision (a)(1), for unprofessional conduct and gross negligence, by reason of his conduct in the three incidents described in Finding 2.

5. Respondent is subject to disciplinary action under Business and Professions Code section 2878, subdivision (a)(4), for unprofessional conduct and the mistreatment or abuse of Client P.N., D.D. and B.O., by reason of his conduct in the three incidents described in Finding 2.

6. Respondent is subject to disciplinary action under Business and Professions Code section 2878, subdivision (a), for unprofessional conduct, by reason of his violation of California Code of Regulations, title 16, section 2518.6, subdivision (b)(3) (failure to maintain professional boundaries) in the three incidents described in Finding 2.

False Statement on Applications

7. Respondent is subject to disciplinary action under Business and Professions Code section 2878, subdivisions (e) and (j), for dishonesty and making a false statement on the re-examination applications.

¹ California Code of Regulations, title 16, section 2519 contains the following definition of gross negligence:

"[G]ross negligence" means a substantial departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent licensed vocational nurse, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the above standard of care.

Appropriate Discipline

8. In view of the seriousness of respondent's misconduct in this case and the fact that his vocational nurse license has expired, the only appropriate discipline is revocation of the license.

Costs of Investigation & Prosecution

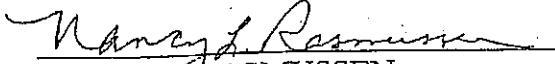
9. Complainant has requested that respondent be ordered to pay the board the costs of investigation and enforcement of the case. Business and Professions Code section 125.3 provides that respondent may be ordered to pay the board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The actual costs of investigation and enforcement are \$11,469.25. The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining the reasonableness of costs. Those factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. None of these factors militate in respondent's favor. However, the reassignment of the case from one deputy attorney general to another must have resulted in some additional legal costs being billed. In view of this, it would be appropriate to reduce the cost recovery to \$10,000.

ORDER

1. Vocational nurse license number VN 171819 issued to respondent Roger Corpuz Tugas is revoked.

2. Respondent shall reimburse the board for its costs of investigation and enforcement in the amount of \$10,000.

DATED: October 7, 2009


NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings

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6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. VN 2004-2081

11 **ROGER CORPUZ TUGAS**

12 16601 Lark Avenue, No. 8
Los Gatos, CA 95032

A C C U S A T I O N

13 Vocational Nurse License No. VN 171819

14
15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
20 Accusation solely in her official capacity as the Executive Officer of the Board of Vocational
21 Nursing and Psychiatric Technicians.

22 2. On or about April 21, 1995, the Board of Vocational Nursing and
23 Psychiatric Technicians issued Vocational Nurse License Number VN 171819 to Roger Corpuz
24 Tugas (Respondent). The Vocational Nurse License expired on August 31, 2006, and has not
25 been renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board of Vocational Nursing and
28 Psychiatric Technicians (Board), under the authority of the following laws. All section.

1 references are to the Business and Professions Code (Code) unless otherwise indicated.

2 STATUTORY PROVISIONS

3 4. Section 2875 of the Business and Professions Code (Code) provides, in
4 pertinent part, that the Board may discipline the holder of a vocational nurse license for any
5 reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice
6 Act.

7 5. Section 118(b) of the Code provides, in pertinent part, that the expiration
8 of a license shall not deprive the Bureau jurisdiction to proceed with a disciplinary action during
9 the period within which the license may be renewed, restored, reissued or reinstated. Under
10 section 2892.1 of the Code, the Bureau may renew an expired license at any time within four
11 years after the expiration.

12 6. Section 2878 of the Code states:

13 "The Board may suspend or revoke a license issued under this chapter [the
14 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

15 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

16 (1) Incompetence, or gross negligence in carrying out usual nursing functions:

17

18 (4) The use of excessive force upon or the mistreatment or abuse of any patient.

19 For the purposes of this paragraph, 'excessive force' means force clearly in excess of that which
20 would normally be applied in similar clinical circumstances.

21

22 "(e) Making or giving any false statement or information in connection with the
23 application for issuance of a license.

24

25 "(j) The commission of any act involving dishonesty, when that action is related
26 to the duties and functions of the licensee.

27

28 / / /

7. Title 16, California Code of Regulations, section 2518.6 (b) states, in relevant part, that a licensed vocational nurse shall adhere to standards of the profession and shall incorporate ethical and behavioral standards of professional practice which include but are not limited to the following:

(3) Maintaining professional boundaries with the patient/client;

8. Title 16, California Code of Regulations, section 2519, states:

"As set forth in Section 2878 of the Code, gross negligence is deemed unprofessional conduct and is a ground for disciplinary action. As used in Section 2878 'gross negligence' means a substantial departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent licensed vocational nurse, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the above standard of care."

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL BACKGROUND

10. In or about June or July, 2004, Respondent was on duty as a licensed vocational nurse at Los Gatos Oaks Convalescent Hospital in Los Gatos, California (Oaks). Respondent used a battery operated device to massage the legs and thighs of Client T.P.,¹ aged

1. Initials are used in order to preserve confidentiality; Full patient names will be disclosed pursuant to a request for discovery.

1 eighty-five (85), without a physician's order.

2 11. In or about June or July, 2004, Respondent was on duty as a licensed
3 vocational nurse at Oaks. Respondent placed the hand of a male client, Client D.D., aged
4 seventy-one (71), over the groin of a female client, Client B.O., aged fifty-four (54), and made a
5 rubbing motion with Client D.D.'s hand over the groin area of Client B.O.

6 12. In or about June or July, 2004, Respondent was on duty as a licensed
7 vocational nurse at Oaks. Respondent placed a dirty diaper, soiled with feces, on the face of
8 Client D.D., aged seventy-one (71), rubbing the feces onto Client D.D.'s cheek.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Gross Negligence)**

11 13. Respondent is subject to disciplinary action under section 2878(a)(1) of
12 the Code, on the grounds of unprofessional conduct, in that in or about June or July, 2004, while
13 on duty as a licensed vocational nurse at Oaks, Respondent committed gross negligence, within
14 the meaning of Title 16, California Code of Regulations, section 2519, as set forth in paragraph
15 10, above.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Gross Negligence)**

18 14. Respondent is subject to disciplinary action under section 2878(a)(1) of
19 the Code, on the grounds of unprofessional conduct, in that in or about June or July, 2004, while
20 on duty as a licensed vocational nurse at Oaks, Respondent committed gross negligence, within
21 the meaning of Title 16, California Code of Regulations, section 2519, as set forth in paragraph
22 11, above.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Gross Negligence)**

25 15. Respondent is subject to disciplinary action under section 2878(a)(1) of
26 the Code, on the grounds of unprofessional conduct, in that in or about June or July, 2004, while
27 on duty as a licensed vocational nurse at Oaks, Respondent committed gross negligence, within
28 the meaning of Title 16, California Code of Regulations, section 2519, as set forth in paragraph

12, above.

FOURTH CAUSE FOR DISCIPLINE

(Mistreatment and/or Abuse of a Client)

16. Respondent is subject to disciplinary action under section 2878(a)(4) of the Code, on the grounds of unprofessional conduct, in that in or about June or July, 2004, while on duty as a licensed vocational nurse at Oaks, Respondent mistreated and/or abused Client T.P., as set forth in paragraph 10, above.

FIFTH CAUSE FOR DISCIPLINE

(Mistreatment and/or Abuse of a Client)

17. Respondent is subject to disciplinary action under section 2878(a)(4) of the Code, on the grounds of unprofessional conduct, in that in or about June or July, 2004, while on duty as a licensed vocational nurse at Oaks, Respondent mistreated and/or abused Clients D.D. and B.O., as set forth in paragraph 11, above.

SIXTH CAUSE FOR DISCIPLINE

(Mistreatment and/or Abuse of a Client)

18. Respondent is subject to disciplinary action under section 2878(a)(4) of the Code, on the grounds of unprofessional conduct, in that in or about June or July, 2004, while on duty as a licensed vocational nurse at Oaks, Respondent mistreated and/or abused Client D.D., as set forth in paragraph 12, above.

SEVENTH CAUSE FOR DISCIPLINE

(Failed to Maintain Professional Boundaries)

19. Respondent is subject to disciplinary action under section 2878(a) of the Code, on the grounds of unprofessional conduct, in that in or about June or July, 2004, while on duty as a licensed vocational nurse at Oaks, Respondent failed to maintain professional boundaries with Client T.P., in violation of Title 16, California Code of Regulations, section 2518.6(b)(3), as set forth in paragraph 10, above.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

2 (Failed to Maintain Professional Boundaries)

3 20. Respondent is subject to disciplinary action under section 2878(a) of the
4 Code, on the grounds of unprofessional conduct, in that in or about June or July, 2004, while on
5 duty as a licensed vocational nurse at Oaks, Respondent failed to maintain professional
6 boundaries with Clients B.O. and D.D., in violation of Title 16, California Code of Regulations,
7 section 2518.6(b)(3), as set forth in paragraph 11, above.

8 **NINTH CAUSE FOR DISCIPLINE**

9 (Failed to Maintain Professional Boundaries)

10 21. Respondent is subject to disciplinary action under section 2878(a) of the
11 Code, on the grounds of unprofessional conduct, in that in or about June or July, 2004, while on
12 duty as a licensed vocational nurse at Oaks, Respondent failed to maintain professional
13 boundaries with Client D.D., in violation of Title 16, California Code of Regulations, section
14 2518.6(b)(3), as set forth in paragraph 12, above.

15 **TENTH CAUSE FOR DISCIPLINE**

16 (False Statement on Application)

17 22. Respondent is subject to disciplinary action under section 2878(e) of the
18 Code, in that on or about January 11, 1994 and July 20, 1994, on his "Board Applications for Re-
19 Examination Vocational Nurse," Respondent failed to disclose the following criminal conviction:

20 a. On or about August 19, 1993, in a criminal proceeding entitled *The People*
21 *of the State of California vs. Roger Tugas*, Municipal Court of Glendale, County of Los Angeles,
22 State of California, Case Number 93M04833, Respondent was convicted of violating Vehicle
23 Code section 23152(A) (driving under the influence of drugs and/or alcohol).

24 **ELEVENTH CAUSE FOR DISCIPLINE**

25 (Act Involving Dishonesty)

26 23. Respondent is subject to disciplinary action under section 2878(j) of the
27 Code, in that Respondent committed an act involving dishonesty, as set forth in paragraph 22,
28 above.

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alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Vocational Nurse License Number VN 171819, issued to Roger Corpuz Tugas.
2. Ordering Roger Corpuz Tugas to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: March 17, 2009

TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
State of California
Complainant

SEP 10 10 58